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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/584,741

09/06/2006

Shigeru Tanaka

TIP-06-1177

5793

35811 7590 08/12/2009
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EXAMINER

NELSON, MICHAEL B

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

08/12/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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pto.phil@dlapiper.com

Response to Arguments

1. Applicant's arguments filed on 07/31/09 have been considered but are not persuasive.

Applicant argues that the two references teach away from one another on the grounds that they disclose differing and conflicting amounts of PMP. The examiner maintains that the teachings of Asakura et al. are insufficient to show that it would be deleterious to use less than 10% PMP since other factors would affect the cushioning factor besides PMP content and also on the grounds that the "insufficient cushioning properties" is not definite enough of a disadvantage (i.e. what qualifies as insufficient?) to teach away from Sadamitsu. Regardless, since Sadamitsu teaches a 10% PMP composition ([0130]) this line of argument is moot since the two references cannot teach away from a 10% composition if they both disclose it as an acceptable amount in their respective inventions.

2. Regarding applicant's arguments against the "non-nucleating voids" limitation rejection, the examiner maintains that since the voids of the prior art are created without nucleating particles, they qualify as non-nucleating voids. Applicant's arguments based on the method of extrusion are without basis since the extrusion method is not instantly claimed and is not clearly shown to affect whether the voids are nucleating or not. There is insufficient support in the specification to provide a clear definition which would override the definition of one having ordinary skill in the art. Moreover, it is unclear what qualifies as a nucleating particle left in the void while being too small to be seen.

3. Applicant argues against the uniformity of Sadamitsu et al. despite the teaching at [0012] which mentions the importance of uniformity and without any substantive argument showing

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that the uniformity would be different from the instant invention. Nor is the uniformity instantly claimed.

4. Regarding applicant's arguments related to the pore size of Sadamitsu et al., Sadamitsu et al. discloses that at least some of the pores have a pore size of less than 0.1 microns, which indicates a sufficient cushioning factor given applicant's specification. Furthermore, there is nothing to show that only certain types of pore sizes of the many pore sizes listed in the examples will affect cushioning factor.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/MN/
08/06/09